

1
2
3
4
5
6
7
8 UNITED STATES OF AMERICA,
9 Plaintiff,
10 v.
11 KRYSTAL FLORES,
12 Defendant.

Case No. 17-cr-00373-CRB-2

**ORDER DENYING MOTION FOR
COMPASSIONATE RELEASE**

14 Defendant Krystal Flores has moved for compassionate release under 18 U.S.C. §
15 3582(c)(1)(A). See generally Mot. (dkt. 68). The Court determines that Ms. Flores has not
16 satisfied the requirements of that statute or the applicable Sentencing Commission policy
17 statement. Ms. Flores's motion for compassionate release is therefore denied. The Court has
18 determined that there is no need for oral argument on this matter and previously vacated the
19 hearing.

20 18 U.S.C. § 3582(c) provides that a "court may not modify a term of imprisonment once it
21 has been imposed except . . . upon motion of the Director of the Bureau of Prisons, or upon motion
22 of the defendant." A defendant may bring a § 3582(c) motion after she has "fully exhausted all
23 administrative rights to appeal a failure of the Bureau of Prisons" to bring the motion on her
24 behalf, or after "the lapse of 30 days from the receipt of such a request by the warden of the
25 defendant's facility, whichever is earlier."¹ 18 U.S.C. § 3582(c)(1)(A).

26
27

¹ Ms. Flores satisfied the exhaustion requirement by sending a letter to her warden on April 28,
28 2020. See Mot. at 4. The government does not dispute that Ms. Flores exhausted. See Opp'n
 (dkt. 77) at 3.

1 “[A]fter considering” the sentencing factors from 18 U.S.C. § 3553(a) “to the extent that
2 they are applicable,” a court may grant the motion to reduce the defendant’s sentence in one of
3 two circumstances. First, “if it finds that . . . extraordinary and compelling reasons warrant such a
4 reduction.” Id. § 3582(c)(1)(A)(i). Second, if “the defendant is at least 70 years of age, has served
5 at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or
6 offenses for which the defendant is currently imprisoned, and a determination has been made by
7 the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other
8 person or the community, as provided under section 3142(g).” Id. § 3582(c)(1)(A)(ii).

9 A reduction in sentence under § 3582(c) must be “consistent with applicable policy
10 statements issued by the Sentencing Commission.” Id. § 3582(c)(1)(A); see also Dillon v. United
11 States, 560 U.S. 817, 819 (2010) (holding that the Sentencing Commission policy statement
12 applicable to 18 U.S.C. § 3582(c)(2) remains mandatory, even after United States v. Booker, 543
13 U.S. 220 (2005)). Although the statute does not define the term “extraordinary and compelling
14 reasons,” the Sentencing Commission has. The application notes to U.S.S.G. § 1B1.13 enumerate
15 five circumstances that establish “extraordinary and compelling reasons” to reduce a defendant’s
16 sentence.

17 The first two relate to the defendant’s medical condition. The “extraordinary and
18 compelling reasons” standard is satisfied if “[t]he defendant is suffering from a terminal illness
19 (i.e., a serious and advanced illness with an end of life trajectory).” U.S.S.G. § 1B1.13 cmt.
20 n.1(A)(i). It is also satisfied by “a serious physical or medical condition, . . . serious functional or
21 cognitive impairment, or . . . deteriorating physical or mental health because of the aging
22 process . . . that substantially diminishes the ability of the defendant to provide self-care within the
23 environment of a correctional facility and from which he or she is not expected to recover.” Id.
24 § 1B1.13 cmt. n.1(A)(ii). The defendant’s age qualifies as a third extraordinary and compelling
25 reason if “[t]he defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in
26 physical or mental health because of the aging process; and (iii) has served at least 10 years or
27 75 percent of his or her term of imprisonment, whichever is less.” Id. § 1B1.13 cmt. n.1(B).
28 Family circumstances requiring the defendant to care for minor children or a spouse or registered

1 partner are a fourth qualifying reason. Id. § 1B1.13 cmt. n.1(C). Fifth, a catch-all provides for
 2 relief if, “[a]s determined by the Director of the Bureau of Prisons, there exists in the defendant’s
 3 case an extraordinary and compelling reason other than, or in combination with, the reasons
 4 described in subdivisions (A) through (C).” Id. § 1B1.13 cmt. n.1(D).

5 Ms. Flores’s motion asserts three bases for compassionate release: the First Step Act’s
 6 expansion of the safety valve provision; her family circumstances; and her own medical
 7 conditions. See generally Mot. None satisfy U.S.S.G. § 1B1.13.

8 Family Circumstances. Ms. Flores argues that “[h]ad she been sentenced in December
 9 2018, rather than May [2018], she would not have been subjected to the 60-month mandatory
 10 minimum,” and that this change in the First Step Act subsequent to her sentencing constitutes an
 11 extraordinary and compelling reason. Id. at 12–13.² But the First Step Act still requires that any
 12 reduction be “consistent with applicable policy statements issued by the Sentencing Commission.”
 13 18 U.S.C. § 3582(c)(1)(A).³ A change in sentencing law is not one of the enumerated bases in
 14 U.S.S.G. § 1B1.13, and this Court is not at liberty to identify its own extraordinary and compelling
 15 reasons. The policy statement recognizes a catch-all basis for relief if, “[a]s determined by the
 16 Director of the Bureau of Prisons, there exists in the defendant’s case an extraordinary and
 17 compelling reason other than, or in combination with, the reasons described in subdivisions (A)
 18 through (C).” U.S.S.G. § 1B1.13 cmt. n.1(D). But the Director of the Bureau of Prisons has made
 19 no determination in Ms. Flores’s case, and the Court will not usurp the Director of the BOP’s role
 20 under the guidelines.

21
 22

² Ms. Flores seems to have abandoned this argument in her reply brief, arguing that “even if the
 23 Court does not deem the relaxed safety valve requirements put in place in the First Step Act an
 24 extraordinary and compelling reason for release, the fact that Congress specifically sought to
 25 reduce sentencing exposure for defendants like Ms. Flores is a factor the Court should consider in
 26 its 3553(a) analysis.” Reply (dkt. 78) at 7. The Court does not conduct a section 3553(a) analysis
 27 here, however, because it concludes that Ms. Flores has not presented extraordinary and
 28 compelling reasons for release.

³ Nor has Ms. Flores moved for a reduction in her sentence pursuant to 18 U.S.C. § 3582(c)(2). See Mot. at 3 (seeking relief under 18 U.S.C. § 3582(c)(1)(A)). Even if she had, she does not assert that the First Step Act was retroactive. See Mot.; Dillon v. United States, 560 U.S. 817, 826 (2010) (“A court’s power under § 3582(c)(2) . . . depends in the first instance on the Commission’s decision not just to amend the Guidelines but to make the amendment retroactive.”).

1 Family Circumstances. Ms. Flores argues that her family circumstances constitute an
2 extraordinary and compelling reason for her release. Mot at 10–11. She has submitted evidence
3 that her mother suffers from a number of serious medical problems and that Ms. Flores’s extended
4 family is straining to provide her mother with necessary care during the pandemic. See, e.g.,
5 Flores Decl. (dkt. 81) (letter from defendant’s twin sister about mother’s condition—providing, for
6 example, “My mother need follow-up care with a neurological surgeon for her aneurysm. I do not
7 know who will take her there or care for her after a surgery.”). Nevertheless, Ms. Flores concedes
8 that care for an ailing parent is not one of the family circumstances recognized by the Sentencing
9 Commission. See Mot. at 11 (citing U.S.S.G. § 1B1.13 cmt. n.1(C)).⁴ She argues again that the
10 Court should nonetheless find her family circumstances extraordinary and compelling. Id. But, as
11 explained above, the Court is limited to the definitions of “extraordinary and compelling”
12 provided by the Sentencing Commission in the application notes to U.S.S.G. § 1B1.13.

13 Medical Conditions. Ms. Flores argues that her own medical conditions put her at greater
14 risk of becoming severely ill should she contract COVID-19. See Mot. at 7–10. In particular, she
15 points to her hypertension, high cholesterol, sleep apnea, and obesity. Id. at 7. Ms. Flores is 33
16 years old. See PSR (dkt. 60) ¶ 40. She has “essential (primary) hypertension,” which she controls
17 with medication. See Mot. Ex. A at 11, 27; PSR ¶ 52. Hypertension “might” put people at higher
18 risk of complications from COVID-19, but the science is unclear. See CDC, “People With Certain
19 Medical Conditions,” available at https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html#serious-heart-conditions (last
20 visited Sept. 17, 2020). There is “only ‘mixed evidence’ to support” the notion that hypertension
21
22
23
24

25 ⁴ In addition, as the government notes, Ms. Flores is not the only possible caregiver for her
26 mother. See Opp’n at 12 (“The defendant’s sister has been serving as caregiver for their mother
27 and grandmother since the defendant’s incarceration and has been doing so throughout the
28 pandemic. Dkt. 70 ¶ 6.”). Nor is it clear that Ms. Flores is the only one who can care for her
mother simply because she is the only family member with a driver’s license. See id. at 11–12
(citing Dkt. 70 ¶ 9). Her family has apparently been operating without a car for the duration of the
pandemic. Id.

1 is a risk factor. See Opp'n Ex. 1 (Order Denying Defendant's Motion for Compassionate Release
2 in United States v. Libric, CR 18-0196 MMC (Sept. 1, 2020)). And “[n]early half of adults in the
3 United States” have hypertension. Id. (citing <https://www.cdc.gov/bloodpressure/facts.htm>). Ms.
4 Flores does not identify any authority recognizing that high cholesterol places individuals at a
5 higher risk. She points to “two small American studies” and a “small Finnish study” that found
6 sleep apnea present to higher degree in some COVID-19 patients, but points to no recognition by
7 the CDC that sleep apnea places individuals at a higher risk. See Mot. at 8–9.

8 The Court is most concerned with Ms. Flores’s professed obesity. The Court has
9 recognized in the past that obesity is a risk factor. See, e.g., United States v. Warbritton, No 16-
10 423 (dkt. 93) at 5 n.3 (“CDC has defined obesity as between a BMI of 30 and 40, and stated that
11 ‘one of the most commonly reported underlying medical conditions for hospitalized COVID-19
12 patients is obesity, which it defined as a BMI between 30 and 40[.]’”). Nonetheless, the evidence
13 suggests that Ms. Flores is not obese. Although she argues in her motion that she “is 5’0” and
14 weighs between 150 and 160 pounds,” see Mot at 9 (adding that “on March 25, 2019, she weighed
15 164 pounds”), the PSR lists her height at 5’1”,⁵ and the declaration her counsel filed with the
16 present motion listed her weight at 150 pounds, see Bischof Decl. (dkt. 69) ¶ 4 (“I communicated
17 with Ms. Flores in early August 2020 and at that time, she weighed approximately 150 pounds.”).
18 The Court adopts the 150 pound weight as the more recent number. Using that weight and a
19 height of 5’, Ms. Flores’s BMI is 29.29; using a height of 5’1”, Ms. Flores’s BMI is 28.34.
20 Neither qualify as obese. See People With Certain Medical Conditions (listing obesity as “at
21 increased risk” and defining obesity as a BMI or “30 or higher”). Accordingly, Ms. Flores has not
22 demonstrated that she has “a serious physical or medical condition, . . . that substantially
23 diminishes the ability of the defendant to provide self-care within the environment of a
24 correctional facility and from which he or she is not expected to recover.” U.S.S.G. § 1B1.13 cmt.
25 n.1(A)(ii).

26 The Court concludes that neither the First Step Act’s expansion of the safety valve
27

28⁵ Ms. Flores argues that the PSR is “the least recent item of available information,” see Reply at 3,
though one would think that at age 33, Ms. Flores’s height has been constant for quite some time.

1 provision, Ms. Flores's family circumstances, nor Ms. Flores's own medical conditions meet the
2 definition of an extraordinary or compelling reason for release. For the foregoing reasons, Ms.
3 Flores's motion for compassionate release is DENIED.

4 **IT IS SO ORDERED.**

5 Dated: September 21, 2020



6 CHARLES R. BREYER
United States District Judge